



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000  
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341*

November 10, 2016

Brandon Whitaker  
Port of Everett  
1205 Craftsman Way, Suite 200  
Everett, WA 98201

**RE: Water Quality Certification Order #13838 for U.S. Army Corps of Engineers  
Public Notice #NWS-2015-1087, Port of Everett Seiner Wharf Terminal –  
Repair and Construction Project, Lower Snohomish River Channel, in  
Everett, Snohomish County, Washington**

Dear Mr. Whitaker:

On July 28, 2016, you submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification under the federal Clean Water Act for the proposed Seiner Wharf Terminal – Repair and Construction project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Joe Burcar, Interim Section Manager  
Shorelands and Environmental Assistance Program

JB:rrp:ap

Enclosure



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By certified mail: 9171 9690 0935 0107 0221 93

Cc: Erin Legge, U.S. Army Corps of Engineers  
Laura Arber, Washington Department of Fish and Wildlife  
Brenda Werden, Washington Department of Natural Resources  
Laura Gurley, Port of Everett  
Jim Shannon, Hart Crowser

E-cc: David Pater – NWRO  
Paul Anderson – NWRO  
Loree' Randall – HQ  
Greg Stegman – NWRO  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER #13838</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference #NWS-2015-1087</b>
<b>CERTIFICATION TO</b>	)	Port of Everett Seiner Wharf Terminal – Repair
<b>Port of Everett</b>	)	and Construction Project; Lower Snohomish
in accordance with 33 U.S.C. 1341	)	River Channel, Everett, Snohomish County,
(FWPCA § 401), RCW 90.48.120, RCW	)	Washington.
90.48.260 and Chapter 173-201A WAC	)	

TO: Port of Everett  
 Attn: Brandon Whitaker  
 1205 Craftsman Way, Suite 200  
 Everett, WA 98201

On July 28, 2016, Port of Everett submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. The U.S. Army Corps of Engineers (Corps) distributed a joint public notice regarding the request for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 31, 2016.

The proposed project is to demolish and reconstruct the existing segment D bulkhead and wharf. Additionally, minor float sections at existing docks Q and R will be reconfigured and relocated.

Mitigation for the project impacts includes a net decrease of 240 square feet in overwater coverage and use of 3,258 square feet (0.075 acre) of credit from Port of Everett's Union Slough Restoration and Advance Mitigation Site.

The project is located at the Seiner Wharf Terminal, Central Marina, near 1016 14<sup>th</sup> Street, Lower Snohomish River Channel, Everett, Snohomish County, Washington, Section 18, T. 29 N., R. 5E., WRIA 7.

#### **AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307).
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws.

3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

#### **WATER QUALITY CERTIFICATION CONDITIONS:**

Through issuance of this Order, Ecology certifies it has reasonable assurance the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC), or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments occurring because of project construction or operations.

#### **A. General Conditions:**

- A1. For purposes of this Order, the term "Applicant" shall mean Port of Everett and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Section 401/CZM Federal Permit Manager, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #13838 and Corps Reference #NWS-2015-1087.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 28, 2016. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA and JARPA Amendment is voided by subsequent changes to the project not authorized by this Order.
- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.

- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 and 10 permit.
- A6. The Applicant shall provide to Ecology's Section 401/CZM Federal Permit Manager a copy of the final Corps permit within two weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- A7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understood relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understood the conditions of this Order and the above-referenced permits, plans, documents, and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.
- A12. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

**B. Aquatic Compensatory Mitigation Conditions:**

- B1. In addition to a reduction in overwater coverage at the project site, the Applicant shall mitigate aquatic impacts through use of 3,258 square feet (0.075 acre) of credit from Port of Everett's Union Slough Restoration and Advance Mitigation Site, as shown in the

ledger *Union Slough Restoration Site Advanced Mitigation Area Balance as of October 26, 2016*, provided by the Port of Everett to Ecology.

**C. Water Quality Conditions:**

- C1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i) or 173-201A-210(1)(f).
- C2. The Applicant shall monitor water quality during in-water construction and implement best management practices according to the *Final Water Quality Monitoring Plan, Seiner Wharf Terminal Repair and Construction Project, Everett, Washington*, prepared by Hart Crowser, dated November 2, 2016, or as modified by this Order or revised and approved by Ecology.

**D. Conditions for Construction Activities:**

- D1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- D2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D3. All construction debris shall be properly disposed of on land so it cannot enter a waterway or cause water quality degradation to state waters.
- D4. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- D5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- D6. All manmade debris that has been deposited below the Ordinary High Water Line (OHWL) within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete rubble, metal debris, and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.

- D7. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will encounter state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.
- D8. Applicant shall ensure fill (sand and gravel) placed for the proposed project does not contain toxic materials in toxic amounts.

**In-Water Construction Conditions:**

- D9. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- D10. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent debris, sawdust, and other materials from entering the water.
- D11. During project demolition or construction, a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other materials released into the waters because of construction activities. All accumulated debris shall be collected and disposed of upland at an approved disposal site.
- D12. During construction, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- D13. Project activities shall be conducted to minimize siltation of the beach area and bed.
- D14. The Applicant shall operate the barge(s) and tug in deep water to minimize nearshore propeller wash impacts, such as suspension of nearshore sediments.
- D15. Barges and other work vessels shall not be allowed to groundout during construction.
- D16. Bulkhead excavation and construction shall be conducted during low tides when the work area is not inundated with tidal waters, to the extent practicable.
- D17. Retaining wall/bulkhead construction shall occur landward of the existing bulkhead to minimize impacts to water quality.
- D18. Removal and placement of riprap below the Ordinary High Water Mark shall be accomplished in a controlled manner in order to minimize impacts to water quality.

**Piling and Existing Bulkhead Removal Conditions:**

- D19. Approximately 128 piles and the existing timber bulkhead shall be removed from marine waters. Piling shall be removed by vibratory extraction. If timber piles break during removal and cannot be removed by vibratory extraction, the piling shall be cut two feet below the mudline.
- D20. Piles, stubs, debris, and all associated excavated sediments shall be contained and prevented from entering waters of the state.
- D21. Piles removed from substrate: the pile shall be moved immediately from the water into the barge or onto uplands. The pile shall not be shaken, hosed-off, left hanging to drip, or any other action intended to clean or remove adhering material from the pile.
- D22. Work surface on the barge deck or on uplands shall include a containment basin for piles and any sediment removed during pulling of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment.
- D23. The piles and any sediment removed during pulling of the piling shall be disposed of at an approved upland disposal site.

**Pile Driving:**

- D24. The 22 pilings shall be steel.
- D25. The steel pilings shall be installed using a vibratory hammer whenever possible. An impact hammer may be used to proof pile, if needed.

**New Bulkhead Steel Z-Sheet Driving:**

- D26. The Z-sheets shall be steel.
- D27. The steel sheet pile shall be installed using a vibratory hammer whenever possible. Direct pushing may be used or an impact hammer may be used to proof sheet pile, if needed.

**E. Emergency/Contingency Measures:**

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- E2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.



- E3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
- E4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
- a. Cease operations at the location of the violation or spill.
  - b. Assess the cause of the water quality problem and respond appropriately to correct the problem and/or prevent further environmental damage.
  - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's Section 401/CZM Federal Permit Manager at (425) 649-7129 or (425) 649-7000.
  - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

**F. Timing Requirements**

- F1. In-water work shall be conducted between August 1 and February 15 of any year, unless otherwise approved by Ecology.
- F2. This Order expires two (2) years from its date of issuance.

**G. Reporting and Notification Requirement Conditions**

- G1. Applicant shall provide notice to Ecology's Section 401/CZM Federal Permit Manager:
- At least three (3) days prior to the start of construction.
  - Within 14 days after completion of construction at the project site.

Notification, referencing Corps Reference #NWS-2015-1087, Order #13838 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

- G2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is complete or this Order expires.

### YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

### ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

### CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett  
Department of Ecology

Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
(425) 649-7129  
[rebekah.padgett@ecy.wa.gov](mailto:rebekah.padgett@ecy.wa.gov)

## MORE INFORMATION

**Pollution Control Hearings Board Website**

[www.eho.wa.gov/Boards\\_PCHB.aspx](http://www.eho.wa.gov/Boards_PCHB.aspx)

**Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

**Chapter 371-08 WAC – Practice And Procedure**

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

**Chapter 90.48 RCW – Water Pollution Control**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

**Chapter 173-204 WAC – Sediment Management Standards**

[www.ecy.wa.gov/biblio/wac173204.html](http://www.ecy.wa.gov/biblio/wac173204.html)

**Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173200.html](http://www.ecy.wa.gov/biblio/wac173200.html)

**Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173201A.html](http://www.ecy.wa.gov/biblio/wac173201A.html)

## SIGNATURE

  
\_\_\_\_\_  
Joe Burcar, Interim Section Manager  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

11/10/2016  
Date

**ATTACHMENT A**

**PORT OF EVERETT  
PORT OF EVERETT SEINER WHARF TERMINAL  
– REPAIR AND CONSTRUCTION PROJECT  
Water Quality Certification Order #13838**

**Statement of Understanding of  
Water Quality Certification Conditions**

I have read and understood the conditions of Order #13838 Section 401 Water Quality Certification for the Port of Everett Seiner Wharf Terminal – Repair and Construction Project. I have also read and understood all permits, plans, documents, and approvals associated with the project referenced in this Order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company